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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,310	10/19/2001	Donald J. Sanders	1443.023US1	9839
21186	7590	05/28/2004	EXAMINER	
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402			VANATTA, AMY B	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 05/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/040,310	SANDERS ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Amy B. Vanatta	3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 03 March 2004.  
 2a) This action is **FINAL**.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-13 and 16-23 is/are pending in the application.  
 4a) Of the above claim(s) 8,9,21 and 23 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-7,10-13,16-20 and 22 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 02 July 2002 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## DETAILED ACTION

### *Election/Restriction*

1. Applicant's election of Group I (automatic opening member) and Group ii (opener inside the pocket) in paper filed 03/03/04 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. With regard to applicant's listing of claims readable on the elected species, the listing appears to be erroneous. Applicant states that claims 1-7 and 10-18 are readable on the elected species, however claims 14 and 15 were canceled in an earlier amendment. Therefore, the listing should not include claims 14 and 15.

Also, the examiner notes that claims 19, 20, and 22 appear to read on the elected species.

Thus, it appears that the proper listing of claims readable on the elected species is claims 1-7, 10-13, 16-18, 19, 20, and 22.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 4-6, 10-12, 16, 17, 20, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Ralph (US 3,010,111).

Ralph discloses a bib which forms a "clothing shield" as claimed, comprising a body side and an outward side, a chest section (11), and a pocket section (15). The pocket section (15) has a bottom fold line (15a) and at least one opening member (20) along the bottom fold line. The opening member (20), when in a form in which the legs 22,23 are spaced from one another, functions to automatically open the pocket, as in claim 1. The pocket section opens when the bib is used (i.e. when the legs 22,23 are separated for use of the bib), as in claim 2. The pocket section curves away from the wearer as in claim 4 (see Figs. 1, 2, 5, and 6). An attachment device (ties 13) secures the clothing shield to the wearer as in claims 5 and 16. The opening member (20) is made of bendable, pliant material, preferably metal (col. 2, lines 30-31), which is resilient as in claim 6.

Regarding claim 10, the shield of Ralph is seen to be of sufficient size to protect a chest, lap, and immediate surrounding environment of the wearer, since the pocket 15 captures spilled material to thereby protect the lap and surrounding area from such spilled material. The chest of the wearer is covered by the bib of Ralph. The pocket (15) is of a full width as in claim 11 (see Fig. 1). The body side comprises a liquid impermeable material (col. 1, lines 43-46) as in claim 12. In use, the bib is secured to a wearer as in claim 17. Regarding claim 20, Ralph discloses an embodiment (Figs. 5-6) in which the pocket section comprises multiple layers (31,32). The opening member (20) is inside the pocket section (see Figs. 1-2 and 5), as in claim 22.

5. Claims 1, 3, 4-6, 10-12, 16-18, 20, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Hollander et al (US 3,407,407).

Hollander et al disclose a bib which forms a “clothing shield” as claimed, comprising a body side and an outward side, a chest section (12a), and a pocket section (28a); see Fig. 6. The pocket section (28a) has a bottom fold line (see Fig. 6) and at least one opening member (52) along the bottom fold line (see strips 62,66 which lie along the bottom fold line). The opening member (52), when inserted into the flange (30a), functions to automatically open the pocket, as in claim 1. The bib includes a lowermost portion which in use lies near the lap of the wearer, depending upon the height of the trunk of the wearer, thus forming a lap section as in claim 3 (see Fig. 1). The pocket section curves away from the wearer as in claim 4 (see Fig. 6). An attachment device (20,24) secures the clothing shield to the wearer as in claims 5 and 16. The opening member (52) is made of bent “semi-rigid” material (col. 3, line 43), thus being at least somewhat resilient as in claim 6.

Regarding claim 10, the shield of Hollander et al is seen to be of sufficient size to protect a chest, lap, and immediate surrounding environment of the wearer. The pocket (28a) is of a full width as in claim 11 (Fig. 6). The body side comprises a liquid impermeable material (col. 2, lines 48-50) as in claim 12. In use, the bib is secured to a wearer as in claim 17. Hollander discloses a step of protecting clothing during eating by wearing the bib (col. 1, lines 24-30), as in claim 18. Regarding claim 20, the pocket section comprises multiple layers (see two layers formed by folded portion forming

flange 30a in Fig. 7). The opening member (52) is inside the pocket section (see Figs. 6-7), as in claim 22.

6. Claims 1, 2, 4-6, 10-13, 16-20, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Reinhart et al (US 6,128,780).

Reinhart et al disclose a bib which forms a “clothing shield” as claimed, comprising a body side and an outward side, a chest section, and a pocket section (100). The pocket section (100) has a bottom fold line (see 120 in Fig. 11) and at least one opening member (600) along the bottom fold line (see Fig. 11). The opening member (600), when inserted into the pocket as shown in Fig. 11, functions to automatically open the pocket, as in claim 1. The pocket section opens when the bib is used (i.e. when the member 600 is inserted into the pocket 100), as in claim 2. The pocket section curves away from the wearer as in claim 4 (see Fig. 13). An attachment device (305) secures the clothing shield to the wearer as in claims 5 and 16. The attachment device comprises mating strips of hooks and a “target” element (col. 6, line 66 through col. 7, line 50), which adhere together and thus forms an “adhesive material” as in claim 19. The opening member (600) is a resilient member as in claim 6. Regarding claim 10, the shield of Reinhart is seen to be of sufficient size to protect a chest, lap, and immediate surrounding environment of the wearer, since the pocket 100 captures spilled material to thereby protect the lap and surrounding area from such spilled material. The chest of the wearer is covered by the bib of Reinhart. The pocket (100) is of a full width as in claim 11 (see Fig. 13). The body side comprises a liquid

impermeable material and the outward side comprises an absorbent material (col. 5, lines 61-63) as in claims 12 and 13. In use, the bib is secured to a wearer as in claim 17. The bib is used to protect clothing during eating (col. 1, lines 38-40), as in claim 18. Regarding claim 20, the pocket section comprises multiple layers (40,80). The opening member (600) is inside the pocket section (see Fig. 11), as in claim 22.

7. Claims 1, 2, 4-7, 10-13, 16-18, 19, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Roessler (US 4,649,572).

Roessler discloses a bib which forms a “clothing shield” as claimed, comprising a body side and an outward side, a chest section, and a pocket section (20,28). The pocket section (28) includes an opening member (fold portion 24 or fold panel 54 with V or W shaped folds 58 as in col. 3, lines 7-17 and col. 3, line 61 thru col. 4, line 15; or, alternatively, opening member 40, col. 2, lines 49-52) which causes the pocket to automatically open as in claim 1 (i.e. when the fold portion 24 is expanded, catcher member 20 is automatically forced outwardly away from the base sheet 12, thereby automatically opening the pocket to the extent claimed; see col. 3, lines 61-67). The pocket section opens when the bib is used, as in claim 2. The pocket section curves away from the wearer (col. 3, lines 65-67) as in claim 4. Attachment device 30 secures the clothing shield to the wearer as in claims 5 and 16, and comprises fastening tape 32 which is a type of adhesive material as in claim 19. The opening member (58 or 40) is resilient as in claim 6. Roessler discloses that folds 58, pocket 20 and base sheet 12 may be all made of the same material (col. 3, lines 20-24). Roessler discloses that the

material may comprise a nonwoven web of spunbonded filaments (col. 2, lines 55-56); thus, in this embodiment, the folds are made of this material and therefore comprise filaments, as recited in claim 7. Also, the material may comprise two layers (col. 2, lines 61-62, thus forming a pocket section comprises multiple layers as in claim 20.

The shield of Roessler is seen to be of a size and structure such that the chest, lap, and immediate surrounding environment of a wearer are protected (e.g. the pocket would capture spilled food or liquid before it reaches the lap or surrounding environment, thereby functioning to protect the lap or surrounding environment), as recited in claim 10. Furthermore, it is noted that the amount of body area covered by the bib is dependent upon the size of the wearer. For a small wearer, the bib of Roessler (as well as the claimed clothing shield) would cover a greater portion of the body and lap. The pocket Roessler is of a full width as in claim 11 (see Fig. 2). The body side comprises a liquid impermeable material and the outer side comprises an absorbent material (col. 2, lines 61-68) as in claims 12-13. In use, the bib is secured to a wearer and protects the clothing during eating as in claims 17-18.

### ***Response to Arguments***

8. Applicant's arguments with respect to Johnson et al and Schlegel have been considered but are moot in view of the new ground(s) of rejection.
9. Applicant's arguments with respect to Roessler have been fully considered but they are not persuasive. Applicant argues that Roessler does not disclose a clothing shield with one or more opening members along the fold line that forms the bottom of

the pocket section. The Examiner disagrees, since the overlapping accordion folds with peaks 58 extend along the fold line that forms the bottom of the pocket section 28 of Roessler. In response to Applicant's argument that Roessler does not disclose a "spring-like" opening member, it is noted that Applicant is arguing limitations which are not claimed, since the opening member is not claimed as "spring-like" in the elected embodiment as recited in claims 1-2, 4-7, 10-13, 16-18, and 19-20.

### ***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy B. Vanatta whose telephone number is 703-308-2939. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 703-305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Amy B. Vanatta  
Primary Examiner  
Art Unit 3765